

1894-089
Lee Co

Chancery Causes: Susan M. Taylor &c vs. Louisville & Nashville Railroad Co]

Ely, Mursey, Richmond, Goslyn, Duncan

CA-Contract Dispute

T-Property
Transportation

AUG 8 1898

JONESVILLE,
LEE CO.

CITY,
SCOTT CO.

The Hon. H. S. K. Morrison
Judge of the Circuit Court of
Lee County Virginia:

Your Complainants, Susan M.
Taylor, Maggie Ely, Mary Ely and
Annie Ely, the last three of whom
are infants and sue by Susan M.
Taylor their mother, and next
friend and guardian.

Who humbly complaining would
respectfully represent, that your
Complainants are the owners in
fee of a valuable real estate sit-
uated in Lee County Virginia, near
Walnut Hill, and through which the
Louisville and Nashville Rail Road
Company a body Corporate, un-
der and by virtue of a law of
Kentucky and Virginia, and doing
business in Virginia, have built
constructed, and have now in daily
operation their line of Rail road
known as the Cumberland Valley
extension of the said Louisville &
Nashville Rail Road. Said Rail
Road runs through said land a
distance of 8321 $\frac{1}{2}$ feet one hundred
feet wide and covers 20 $\frac{848}{1000}$ acres.
now in the use and enjoyment of
said road.

The occupancy of this land, by
said road is without any legal

1 process whatever, and for which
2 your Complainants have never
3 received anything like adequate
4 Compensation -

5 On or about Aug 7 - 1889, the said
6 Rail Road Company undertook to
7 condemn and appropriate said land
8 by the Condemnation of the same by
9 what it termed General Commis-
10 sioners, appointed by the County
11 Court of Lee County, a copy of
12 the orders, notice, reports and
13 proceedings in said cause will be
14 found herewith filed marked "Copy
15 of Record." And the same is prayed
16 to be considered herewith as part
17 hereof.

18 By which it will be seen, that
19 at the time of the first order appoint-
20 ing said supposed Commissioners
21 down to the Confirmation of the
22 Condemnation thereof, the Judge of
23 the County Court, making said orders
24 was at the time, and continued to
25 be the Counsel of said road. The
26 said Judge, gave notice of the time
27 of meeting on the land, in the name
28 of his Company by him as atty, and
29 so signed, and on the same paper, he writes
30 out the execution of the notice by the party
31 delivering it, and swears him to it and
32 signs his name, as County Judge

1 showing conclusively that through all the
2 proceedings except - perhaps the last
3 order entered he acted as judge of the
4 Court, and atty for the road.
5 He wrote the report of the Commis-
6 sioners, addressed to himself as judge
7 it was filed in his own Court and
8 confirmed by him as judge of the
9 Court. And in all the orders made
10 therein, they read "This day came the
11 parties by their attys" and your Com-
12 plainants allege that they had no atty
13 nor did said Rail Road Company
14 have any except the judge. And the
15 recital that they appeared by Counsel
16 is in fact not true, they were not
17 represented by Counsel or guardian
18 ad litem, but the proceedings were
19 wholly ex parte.

20 This record, owing to the interest as
21 Counsel, which the judge had therein,
22 is null and void as your complain-
23 ants are advised, but they have the
24 semblance of law and create an
25 incumbrance upon their property,
26 which materially affects its value
27 and interferes with its usefulness and
28 enjoyment. And to be taken from them
29 in this way would be violative
30 of the Constitution of the State viz: Taking
31 private property without due pro-
32 cess of law and without a fair com-
pensation.

Jant

1 These proceedings while in fact void
2 are greatly to the prejudice of your
3 Complainant, and might be plead
4 in bar of an action for damages at
5 law upon the ground that being a
6 record in solemn form could not
7 be attacked collaterally. For that
8 reason, they seek to have them set
9 aside held void & counted for
10 naught,

11 Said Rail Road occupies nearly 21 acres
12 of said land worth on an average, \$50.00
13 per acre, and it damages the residue, of
14 the farm, not less than \$5000.00 and is
15 of no peculiar benefit to the said
16 residue. It runs over and destroys
17 a most valuable Spring, and one
18 that cannot be supplied for use
19 to the farm; It comes to be made
20 two long fences in a neighborhood
21 where timber is difficult of access
22 and costly to be put to the place.
23 To show which said damages and to
24 procure reasonable compensation
25 therefore your petitioners never had
26 any legal opportunity.

27 There lands are held, a life estate
28 in part of them by Susan M. Taylor
29 and the reversion of that & the fee of
30 the other belongs to your infant
31 Complainant. In which they hold
32 and third each.

1 Your Complainants are advised that
 2 as resort to a Court of equity, must
 3 be had to set aside said so called
 4 proceeding of Condemnation, that the
 5 jurisdiction once attaching the Court
 6 will settle all the rights of the
 7 parties and thus prevent Circuity of
 8 action and a multiplicity of suits.

9 To this end they, your Complainants
 10 alleges that they have sustained damage
 11 by the appropriation Construction and
 12 permanent use of said land by said
 13 Rail Road Company to the extent of
 14 not less than \$5000.00.

15 They admit however that their former
 16 Guardian received the sum of \$312.72,
 17 and for which they are willing if
 18 deemed proper by a Court of equi-
 19 ty to account and Credit on whatever
 20 sums may be allowed them -

21 The object of this bill therefore is
 22 to have, said so called Condemnation
 23 set aside, together with all notices
 24 reports & orders; that the same be
 25 held void & Counters for naught; that
 26 a jury be empanelled upon the
 27 law side of this Court, to enquire
 28 and ascertain the value of the land taken
 29 and the damage to the residue thereof
 30 over & above any peculiar bene-
 31 fit, if any conferred on the residue
 32 by reason of said Construction of said road.

1 To effect - which they pray that
2 the Louisville and Nashville Rail Road
3 Company a body Corporate, ~~be~~
4 ~~a party~~ render & by virtue of the laws
5 of Kentucky & Virginia doing business
6 in Virginia, be made a party
7 hereto, and answer the allegations
8 hereof upon the oath of its proper
9 officers - And upon a hearing
10 a decree be rendered setting aside
11 said so called Condemnation pro-
12 ceedings as being a cloud upon
13 the title of your Complainant, and
14 and vigorously affecting the right &
15 enjoyment thereof. And to prevent
16 further suit & delay that an en-
17 quiry be made as to the damage
18 done, the rents & profits, use & accu-
19 pation, value and damage to said
20 estate had & done by the said the
21 defendant Company, and for
22 all other further & general relief
23 May Supra vires &c. &c.

A. L. Pendleton

p.g.

see original P
Susan M. Taylor *vs*

vs Bill Chy

L. & M. R. R. Co

1893 1st Sept Rules Bill filed
Spa. exp. & Deane. nisi
" 2nd Sept Rules D. Ct. Coufd
& Cause set for hearing
by *Plff*

Plaintiffs Costs

C 8.36

S 4.50

Copy of record 6.25

\$18.11

Defts Costs

Clerk 3.80

Copy of record 12.50

Cour in Chy 2.75

Wits 1.00

Atty 15.00

\$35.05

Costs of appeal 79.69

\$114.74

\$118.11

\$129.85

To the Hon. H.S.K. Morrison Judge of the Circuit Court of Lee County, Virginia.

The Demurrer and answer of The Louisville and Nashville Railroad Company, a body corporate, doing business under the laws of Virginia, to a bill in Chancery, exhibited against it in this Honorable Court by Susan M. Taylor, Maggie Ely and others.

Respondent says that Complainants bill is not sufficient in law to call upon it to answer in this Honorable Court, but that there is good cause of demurrer thereto and it demurrs accordingly, and prays judgment &c.

And not waiving said demurrer but relying and insisting thereon, should other and further answer be required of it, answering it says: that it is true that said infant complainants Maggie, Mary, and Annie Ely are the owners in fee subject however to the life estate of Susan M. Taylor their mother, of a very large and valuable tract of land situated near Walnut Hill, Lee County, Virginia, through and over which Respondent has constructed its railroad known as the Cumberland Valley Division; that it is further true that said railroad runs through or over said tract of land for a distance of 8321.6 feet, and that the strip taken for right of way purposes contains 20.848-1000 acres. Respondent denies that the occupancy of this strip of land by it, is without any legal process whatever, and for which said complainants have never received anything like adequate compensation. But on the contrary respondent will show your Honor, that said strip of land was fairly and legally condemned, the compensation for the land taken and damages to the residue of said tract assessed by three fairminded men who are as good judges of land and as competent to estimate the damages done to said tract of land as any men that could have been obtained in the County of Lee. And respondent will further show your Honor, that said Commissioners consulted fully with the complainant, Mrs Susan M. Taylor and with Mr T.A. Taylor her husband, who was then the guardian of the Infant complainants, with reference to the value of the land taken and the damages that would result to the residue of said tract, before they made their assessment, and that the sum assessed and fixed by said commissioners was fifty per cent higher than the sum fixed by Mrs. Taylor, and three times the sum fixed by Mr. T.A. Taylor the guardian of said Infants. Your res-

38 dnet will further show your Honor that the confirmation of said report of said commissioners, of which such great complaint is now made, was made by the then Judge of the Lee County Court, at the urgent request of Mr. T.A. Taylor guardian for said infant complainants.

Respondent says that it is True that on the 7th day of August 1889 it through C.T. Duncan its Attorney gave to T.A. Taylor and Susie his wife and to T.A. Taylor Guardian for Maggie, Mary and Annie Ely notice that on the 21st day of August 1889, the Commissioners theretofore appointed by an order of the County Court of Lee County for the purpose which would meet together on said land of ^{which} they and their wards were tenants of the freehold, to assess a just compensation for such of said land as was proposed to be taken by respondent for its purposes. Said Commissioners, to-wit, H.C. Joslyn, H.C.T. Richmond, and Thomas S. Ely met on 46 said land on the day mentioned in said notice, they were shown over ~~the~~ said land proposed to be taken, by T.A. Taylor, Guardian of said infant complainants, and the said Taylor valued said land proposed to be taken at five dollars per acre, and asserted that there was no damage to the residue of the tract, but on the contrary that the value of said tract would be greatly enhanced by the building of a railroad over it because of the great amount of valuable timber standing on said tract of land and the adjoining mountain tract belonging to said infants. But said Commissioners refused to take said Taylor's valuation, and fixed the 57 compensation at three times the sum suggested by Mr. Taylor or \$312.72

Respondent says it supposes it is true that the order appointing said Commissioners was made by C.T. Duncan, who was then Judge of the County Court of Lee County and who was also Attorney for Respondent. The Respondent supposes it is also true that the ~~order confirming the~~ report of said Commissioners was made and directed to be entered by the said C.T. Duncan as Judge of the County Court of the said County. But 65 said Respondent has been informed, believes and here asserts it to be true that the order confirming said report was with the full knowledge and at the urgent request of the said T.A. Taylor, husband of the adult and guardian for the infant complainants.

Respondent fails to see any injury that was or could have been done to the complainants or any one else by reason of the fact that said Commissioners were appointed by a Judge who happened to be counsel

75 For Respondent, especially when such Judge appointed, as Respondent avers he did appoint, persons qualified in every sense to discharge fairly and impartially the duties required of them, men without interest, bias or prejudice in the matter and of characters as high and pure as any in the County of Lee. Nor can it see how any injury was done to the Complainants by the confirmation of that ~~order~~^{report} by said Judge at the urgent request of the Guardian of said infants. It is true that the notice to the free holders was given by C.T.Duncan who was counsel for respondent, that said notice was delivered by L.D.Fulkerson, that said Fulkerson made oath to the fact of the delivery of said notice before said C.T.Duncan as Judge. * It is also true that the said C.T.Duncan wrote the report of the said Commissioners which was addressed to and filed in ~~the~~ the County Court of Lee County of which he was then Judge. But complainants failed to point out any injustice or injury done to them by reason of said fact. It is true that the several orders made ~~readiliasfollowsac~~ "This day came the parties by their Attorneys" respondent does not know whether said complainants appeared by Attorney or not but it is informed that said Taylor the guardian of said infants appeared in person and had the County Judge to confirm said report and pay him the compensation fixed by said commissioners for the land taken knowing at the time that said Judge was the Attorney for respondent so Respondent concludes that the said guardian appeared and acted as his own Attorney.

Respondent will further show your Honor that the record of said condemnation proceedings discloses the fact that said Taylor appeared before the Commissioner appointed to ascertain who was entitled to the money assessed by said Commissioners as compensation for the land taken and gave evidence before said Commissioner so as to enable him to properly apportion the money between his wife and his wards. The report of said last named Commissioner was made to and confirmed by the Hon. Jas. W.Orr Judge of the County Court of Lee County with the full knowledge of the Guardian of said infants. Said report was filed on the 29th day of March 1890 and confirmed on the 9th day of April 1890 as appears by the record to which reference is here made.

Respondent denies that this record, owing to the interest as Counsel which the Judge had therein is null and void, or that it is null and

void for any other reason, because no injury is claimed even by the complainants to have been done them by reason of the fact that said Judge of the County Court of Lee County was also Counsel for Respondent no claim is set up that the Commissioners appointed by said Judge were incompetent, prejudiced, interested or in any way biased in their action or that they acted corruptly, or that they were influenced in their determinations by said Judge, and besides this as heretofore stated the order confirming said report, was made at the request of said guardian. The money was received by him, held and doubtless used by him, and no complaining of any kind made, until the 25th day of January 1892, more than two years after he had received said money, and more than two years after the confirmation of said report. Why did not these complainants, if they thought wrong and injury had been done them, raise their cry of distress, on the 9th day of April 1890, when Judge Orr confirmed the report of Commissioner Sewell? Respondent's Attorney was not then Judge of the County Court of Lee County. Respondent denies that the proceedings it has taken, the condemnation of said strip of land, the construction of its railroad over and upon said strip of land or the daily use of the same for railroad purposes, has injured or impaired the value of the Complainants tract of land, but on the contrary, respondent avers that the building of said road over and upon said tract of land has very materially increased its value. Respondent denies that the proceedings had to take said land are in violation of the Constitution of this State, and it denies that said land was taken without due and fair compensation.

Respondent will now show your Honor, that for 2381 feet, which is more than one fourth of the distance, the road runs along and upon a bluff of rocks that is practically, if not wholly, worthless for any purpose, that for the next 1791 feet the road runs over land that is exceedingly poor and of little value for farming purposes, the residue of the land taken is better in quality, but if taken out away from said farm and offered for sale, if that could be done, would not sell for \$20.00 per acre. The strip of land here taken is far below, when all taken together, the average value of the whole farm, yet the whole farm is only valued for taxation by a sworn officer of the County at \$ 8.44 per acre *including buildings.*

Respondent denies that the land taken and now occupied by it, is worth \$50.00 per acre or anything like that sum, but on the contrary respondent avers that the sum fixed by said Commissioners, to wit, \$15.00 per acre is the fair cash value of said land and about ~~three~~ ^{two} times its assessed value. Respondent denies that said farm or the residue thereof is damaged \$5000.00 or any other sum, and on the contrary respondent avers that said farm is worth more to day with the railroad running through it, than it was before said railroad was built. Respondent denies that said railroad runs over and destroys a most valuable spring that cannot be supplied for use to said farm, there is a spring on the right of way and very close to the fill which is perhaps injured to some extent but it never was a valuable spring, and with only a little labor could be made as good as ever, besides just a little distance from said spring there is another of equally as good quality, and large in volume, as respondent is informed, than the spring on the right of way. Respondent denies that the building of said railroad causes two or any other number of fences to be built. No new fences have been built along said road nor are any necessary. Respondent most emphatically denies the allegation that ~~respondents~~ ^{complainants} never had the opportunity of showing the damages done to said tract of land, but upon the other hand respondent says it has been informed and it here asserts that on the day said commissioners met, its Attorney, asked T.A. Taylor, the husband of said adult Complainant and the guardian of said infants to go with the Commissioners and point out to them every possible source of damage the taking of said strip of land would be to said tract of land, and besides this, the Courts were open to him, to his wife and his ward and if not satisfied with the assessment made why not have objected to it as others did successfully. As to what action your Honors court will take to avoid multiplicity of suits, it will be time enough to argue when the case comes on for a hearing, but respondent here desires to say that should your Honor be of opinion that the condemnation proceedings heretofore had are invalid, then it is perfectly willing that your Honor shall, if you can legally do so settle every matter involved. Respondent earnestly desires a full and a fair settlement, which it thought it once had, but it has learned by sad experience that these Complainants are hard to satisfy, that although given by the commissioners

more than they asked, and although that report was confirmed at the special request of the husband and guardian, still they are not satisfied although for more than three years they have been enjoying the money paid them for said strip of land which they are carefull to still hold on to. And now having answered said bill as fully as they are advised it is material for them to answer it they pray to be hence dismissed with their reasonable costs.

Louisville & Nashville
Railroad Company

L. J. Bureau
Atty.

1898

Nov. 13

This answer is excepted to because not sworn to by the master officer and not sworn to at all.

2. Because from line 21 to 38, contains statements which furnish no defense to this action, and are not proper to be enquired into because if true, they are no defence.

3. For the same reason lines 48 to 57 but inclusive are excepted to as furnishing no grounds of defence and are not proper to be enquired into. And for same reason lines 65 to 75 but inclusive. And because the said answer is not signed by any atty at law.

4. It is further excepted to, in so far as the answer seeks to raise the question as a defence that the Courts are honest & capable & fair minded men and that no injury was done Complainant by reason of the Judge being Corrupt. Such is no defence. The judgment is void because contrary to law however fair & just it may be.

At Preliminary for excepting

Danville & Nashville R.R. Co.

Ans. 3. Answer

Swan W. Taylor et als.

Virginia

Circuit Court of Lee County in
vacation March 24th 1894

Susan M. Taylor for. plff.

Against

L. & A. R. R. Co. ... depts

} In Chy.
In vacation

This Cause came on this day to
be heard in vacation, ^{permanently to a decree entered at the last term of the} upon the
Bill of the plff and exhibits
filed; the answer of the defend-
ant Company and exceptions
thereto and the depositions of
witnesses; and was argued by
Counsel - On consideration whereof
and for reasons appearing to
the Court said exceptions to said
answer are overruled; and the
Court being of opinion, that the
Judge of the County Court, of Lee
County was at the time of the
appointment of the Commissioners
and at the date of the Conclusio-
nari and report; Counsel for the de-
fendant Company; and that while
he was such Counsel he acted as
Judge in the Cause, and that by
reason thereof he was disquali-
fied, and could not lawfully take
or acquire jurisdiction thereof, and
that his act, as such are void

It is therefore adjudged ordered
 and decreed that, the judgment
 and Condemnation proceeding in
 the bill mentioned and set out
 are void in law, and they and
 each of them are hereby annulled
 and that the party recover their costs of this suit -
 held void and set aside, to be
 so taken and held, when the party
 or some one for them shall pay
 to the Clerk of the Circuit Court
 of Lee County, for the use and ben-
 efit of the defendant Company
 the Louisville & Nashville Rail road
 Company the sum of \$512.72 and
 legal interest thereon from the 21st
 day of August 1889. And no
 further action being necessary this
 Cause is stricken from the docket -

Memorandum - the debts suggesting that they feel aggrieved by this
 decree & desire to appeal therefrom it is ordered that this decree
 be suspended for 60 days in debt & execution and in the
 penalty of \$500⁰⁰ on condition as law directs before the
 Clerk of this court with good and secure, then

To Clerk of the Circuit
 Court of Lee County Va

H. J. K. Moisan
 March 24/1894

Amended Judgment

Decree &
 Remitt.

L. & J. R. R. Lee

In vacation March 24, 94

Entered in order book 0.603

To the Clerk of the Cir-
 cuit Court of Lee Co Va
 Enter this in order
 book March 24/1894

H. J. K. Moisan

Susan M. Taylor et al
against } In ch
L. & N. R. R. Co. Sept. }

This cause came on this day to be heard upon the file of its petition exhibits filed the answer of the defendant, and exhibits filed and exceptions thereto. And was argued by counsel. And the Court not having time at this term to duly consider the same, by agreement of the parties hereto this cause is to be heard and determined by the Judge of this Court, in vacation, and any decree he may render is to have the effect as if he subject to the same rules and provisions as provided for by law for vacation cases. And the cause is continued on this docket for the coming of said vacation order.

Susan M. Ely et al

2 { Decu for
vacation order.

L. & A. R. R. Co.

March 7. 1894

E. C. O. B. Page 604

Mch 16/1894

Enter this
March 16. 1894
H. S. K. M.

The depositions of H.C.T.Richmond and others, taken before me, J. A.G.Hyatt, a commissioner in chancery for the Circuit Court of the County of Lee and State of Virginia, pursuant to notice hereto annexed, at the Office of C.T.Duncan, in Jonesville, Virginia, on Friday the 2nd day of March 1894, to be read as evidence in behalf of the Louisville and Nashville Railroad Company in a certain suit in equity, depending in the Circuit Court of Lee County, Virginia, wherein the Louisville and Nashville Railroad is defendant and Susan M.Taylor, and others are plaintiffs.

P-R-E-S-E-N-T.--C.T.Duncan, Attorney for defendant.

--

The witness, H.C.T.Richmond, being duly sworn, deposes as follows:
First question for defendant.--Please state your age, occupation and place of residence.

Answer.--I am 54 years of age, I am a merchant and farmer and live at Ewine, in Lee County, Virginia.

Second question for same.-- Please state whether or not you were one of the Commissioners who assessed compensation and damages to be paid by the Louisville and Nashville Railroad Company to the widow and heirs of Robert M.Ely, deceased for such part of their lands as was taken by said Railroad Company for its purposes.

Answer.-- I was.

Third question for same.-- Please state whether or not Susan M. Taylor late widow of the said R.M.Ely, deceased, and her husband T.A.Taylor, Guardian of said infants, had notice of your meeting on said lands, the purposes for which you met, and also please state who if any person went with you over the strip of land proposed to be taken.

Answer.-- They had notice, at least this was my understanding, and they acted like they did have notice, and my recollection is that T.A. Taylor, Guardian for said infants, H.C.Joslyn and T.S.Ely, two of the commissioners, were all that were with me when I went over the land.

Fourth question for same.--Please state whether or not you consulted with the said T.A.Taylor, Guardian for said infants, and Susan M. Taylor, their mother, as to the damage that would be done to said tract of land by taking the proposed strip, and also whether or not you asked their opinion as to what would be a just compensation therefor.

Answer.--The commissioners did consult with them as to the damage and took their opinion as to what would be a just compensation for said strip of land.

Fifth question for same.-- Please state what each one of them said about it, and what each one of them thought would be a just compensation.

Answer.--My recollection is that Mr. Taylor said the land was very much worn and thin and suggested that \$5.00 or \$6.00 per acre would be enough, and he also stated in ~~the~~ conversation that the advantages of the farm by the building of the Road would be in excess of the damages. I told him that the \$5.00 or \$6.00 an acre would be too small and Mrs. Taylor agreed with me in this opinion. We then fixed the sum of \$312.-72 as shown in our report as a just compensation for the land taken, and this sum was at that time satisfactory to both Mr. and Mrs. Taylor, as I understood it.

Sixth question for same.-- Please state, commencing at the west line, the character of the land taken.

Answer.--Commencing at the Brent line and running for some distance the road runs through a rocky bluff which I would consider of little value for farming purposes, the remainder of the line we considered thin and of little value except a small portion through the Sugar Orchard which is not cleared and is fresh land.

Seventh question for same.-- Please state whether or not C.T. Duncan either as counsel for said Railroad Company or as Judge of the County Court of Lee County exercised or attempted to exercise any improper influence over the commissioners in making this assessment or any other assessment made by the Board of which you was one.

Answer.--He did not, either in this case or any other, but on the contrary in one or two instances he advised the commissioners to allow higher compensation than they had fixed in their minds.

Eighth question for same.-- Please state if you have had any conversation with Mr. Taylor, the guardian of said infants since the Railroad was built or while it was in course of construction in reference to his application for a depot upon said land, if so what did he say?

Answer.-- When the question of depots was being agitated, Mr. Taylor told me to see Mr. O'Brien, the Chief engineer

on said road, and say to Mr. O'Brien that if he would place a depot on his lands near his house he would pay back the money he had received from the Company for compensation for lands taken by condemnation proceedings.

Ninth question for same.-- In this conversation did Mr. Taylor express any dissatisfaction at the compensation assessed by the commissioners of which you were one.

Answer.--No, sir, he did not.

And further this deponent sayeth not.

*Witness 1 day
etc*

H. C. Joslyn

H.C. Joslyn, another witness, being duly sworn, deposes as follows:

First question for defendant.--Please state your age, occupation and place of residence.

Answer.--I am 57 years of age, a farmer by occupation, and reside near the town of Jonesville, in Lee County Virginia.

Second question for defendant.--Please state whether or not you were one of the commissioners who assessed compensation and damages to be paid by the Louisville and Nashville Company to Susan M. Taylor and her children for such part of their lands as was taken by said Railroad Company for its purposes.

Answer.--I was.

3rd question for defendant.-- Please state whether or not Susan M. Taylor late widow of said R.M. Fly and her husband T.A. Taylor, guardian of said infants had notice of your meeting on said land, the purposes for which you met, and also state who if any person went with you over the strip of land proposes to be taken.

Answer.-- They had notice. T.A. Taylor went with the commissioners over the strip of land proposed to be taken.

4th question.-- Please state whether or not the commissioners consulted with T.A. Taylor, guardian of said infants, and Susan M. Taylor, their mother, as to the damage that would be done to said tract of land by taking the proposed strip, and also whether or not you asked their opinion as to what would be the just compensation therefor.

Answer.-- The commissioners did consult with them both as the ~~then~~

their opinion as to the damages and compensation for the said strip of land.

5th. question.--Please state what each one of them said about it, and what each one of them thought or said would be a just compensation.

Answer.--Mr. Taylor insisted that no damages would be done to the tract of land over and above the advantages to be derived from the building of said Road and said that if they could do it lawfully they would give the right of way, but that he had been informed by Judge Duncan that as his wards were interested this could not be done. He then said that he thought \$5.00 per acre would be ample compensation, Mrs. Taylor said that she thought \$10.00 per acre would be a just and full compensation, but the commissioners fixed the compensation at \$15.00 per acre or \$312.70 for the whole strip, and this assessment seemed to be entirely satisfactory to both of them. The compensation allowed was exactly what we acting under our oaths thought was just and right.

6th question.-- Please state, commencing at the west line of said tract of land, the character and quality of the land taken.

Answer.-- My recollection is that for something like one fourth of the way it was very rocky on a kind of hill-side or back-bone and for farming purposes of little or no value, then the land was smoother and leveler, but very much worn for several hundred yards, from there on the land is of better quality, but cleared and worn to a considerable extent except for a distance of some two hundred yards through a Sugar Orchard where the land was fresh and of good quality.

7th question.-- Please state whether or not C.T. Duncan either as counsel for said Railroad Company, or as Judge of the County Court of Lee County exercised or attempted to exercise any improper influence or any influence at all over the commissioners in making this assessment or any other assessment made by the Board of which you were one.

Answer.-- He did not, in this case or in any other as against the people whose lands were being assessed, but he did advise the commissioners in some instances that he thought their awards were too low, and caused the commissioners to increase the assessments they had decided on.

And further this deponent sayeth not.

Witness my hand and seal this 10th day of October 1880.

Henry C. Joslyn

C.T.Dunagan, another witness of lawful age, being first duly sworn, deposes as follows:--

As Attorney for the Louisville and Nashville Railroad Company I was with the commissioners as they went along the line making their assessments. I did not go with them over the strip of land belonging to the plaintiffs. Before they started I requested T.A.Taylor the husband of Susan M.Taylor and guardian for the infant plaintiffs, Maggie, Mary, and Annie Ely, to go with said commissioners and point out to them every source of damage that he thought the taking of said strip of land and the building of said Railroad would be to the residue of said tract. This I suppose he did as he went off with the commissioners when they started and came back with them when they returned to his house. After returning to the house one of said commissioners told me that MrTaylor wanted them to make said assessment of compensation at \$5.00 per acre; that Mrs.Taylor thought that \$10.00 per acre was a just compensation, I said to them that either sum was low and for them, the commissioners, to make the assessment at just what they thought was a just compensation and they made it at \$15.00 per acre. After said assessment was made, at the request of said commissioners, I wrote their report for them and they signed it and returned it to court. Some time thereafter Mr. Taylor came up to court and asked me if the report had been confirmed. I told him it had not, that as I was Attorney for the Company I did not want to make the order confirming said report, and that I was waiting to get Judge Richmond, Judge of the County Court of Scott County, to come and hold a term of court for me, and pass upon these reports. Mr. Taylor then said to me not to do that, but to enter an order myself confirming it, that there was no contest of any kind, and the assessment was perfectly satisfactory to him and his wife, and that he wanted the money. I thereupon went into court which was already open, and directed the Clerk to enter an order confirming said report of said commissioners. This order was made at the request and by the consent of Mr.Taylor, as guardian as aforesaid. I then gave Mr.Taylor a check on the Powell's Valley Bank for \$312.72 the amount fixed by said commissioners, which check I suppose he took to the Bank on that day and received the cash for it, and it was soon thereafter returned to me by said Bank stamped paid.

I never knew of any dissatisfaction of these parties with said assessment and the confirmation thereof until about the 25th day of January 1892. In the meantime they had attempted to get the Company to put a depot on the road where it runs through their lands, but failed, the engineer thinking it was not the most suitable place for the convenience of that neighborhood. I resigned the Judgeship about January 1890. The order confirming the report of Commissioner Sewell, who had ascertained and determined the proportion in which said money should be divided between the infants and the said Susan M. Taylor, their mother, was made by the order of James W. Orr who succeeded me as Judge of the Lee County Court.

And further this deponent saveth not.

Car. T. Duncan

Virginia, Lee County, to wit:

I, J. A. G. Hyatt, a commissioner in chancery, for the Circuit Court of Lee County, Virginia, do certify that the foregoing depositions of H. C. T. Richmond, H. C. Joslyn and C. T. Duncan were duly taken, sworn to and subscribed before me, at the times and place, and for the purpose ~~xxxxx~~ therein mentioned. Given under my hand this 3rd day of March, 1894.

J. A. G. Hyatt
Comr.

Comm. fee for taking depositions \$2.75
Witnesses 1.00

L. & M. R. Board
and 3 Depo

Susan M. Taylor

Received from Commissioner
before whom taken and
filed March the 2nd 1894
A. B. Munsey Clerk

The case is not sub-
mitted only on ex-
ception to the answer
we will if the case
is to be heard want
to take proof in
rebuttal. March 12
1894 A. K. Primmer

To Susan M. Taylor, Maggie Ely, Mary Ely, and Annie Ely:

You are hereby notified, that on Thursday, the 1st day of March 1894, at the storehouse of H.C.T. Richmond in Lee County Virginia, I will proceed to take the depositions of H.C.T. Richmond, and on Friday, the 2nd day of March 1894, at the office of C.T. Duncan in Jonesville, Lee County Virginia, I shall proceed to take the depositions of H.C. Jocelyn and Thomas S. Ely, ^{+ others} to be read as evidence in my behalf in a certain suit in equity depending in the Circuit Court of Lee County, Va., where in I am defendant and you are plaintiffs: and if from any cause the taking of the said depositions be not commenced, or if commenced, be not concluded on that day, the taking thereof will be adjourned from day to day ^{and from place to place} ~~at the place aforesaid~~; until the same shall be completed.

Louisville and Nashville Railroad Company

By Counsel.

L. & N. R.R. Co.

ad. { Notice to take dep-
ositions.

Susan M. Taylor and others.

Virginia Lee County, To wit
This Robert Anderson is per-
sonally appeared before me
L. D. Fullerton a Notary pub-
lic in and for said County
and made oath that on the
28th day of February 1894 he
delivered a true copy of the
within notice to Susan M. Taylor
for herself and as guardian for
said infants Maggie Mary &
Annie Ely heirs at law of R. M.
Ely deceased, & signed under my
hand this the 28th day of March 1894
L. D. Fullerton Notary Public

Jonesville, Va. March 23rd 1894.

Hon. H. S. K. Morrison,

Gate City, Va.

Dear Sir:--

In the case of Susan M. Taylor et als. against the Louisville and Nashville Railroad Company I desire to call your attention to a few authorities which I have not heretofore cited.

First. Sections 1074 and 1075 Code of Va. 1887. These two sections when carefully considered seem to imply that a Railroad Company could agree with the guardian of the infant owners of a tract of land for such portion of it as said Company might desire for its purposes, and that if it acquired title by agreement with the guardian that this would bind the infants. If this construction is correct then his consent for the order confirming the report of the Commissioners to be entered by a judge disqualified from interest or otherwise, would be binding on the infants.

Second.--The judgment in this case in any event is not void, but merely voidable, and would only be set aside if injustice had been done to the parties.--See first Black on Judgments, Section 174.

Third.-- When the owner receives and accepts the damages assessed, he is estopped to afterwards to afterwards assert that proceedings were irregular or void, or from afterwards denying that he consented to the taking.-- See VII Lawsons Rights and Remedies, Section 3901, and cases there cited.

Fourth.--T. A. Taylor who was guardian for said infants as well as his wife both knew that I was Attorney for the Road. The report was confirmed at the request of said Taylor, and before they could be heard to say that the condemnation proceedings were invalid they

H.S.K.M. 2

Jonesville, Va. 1894.

would have to show that they were ignorant of the fact that I was Attorney for the Company. Se 80th Va. 616.

Fifth.—The final judgement in this case was rendered by Judge Orr who was in no way interested and if objections had been made, this whole matter could and would have then been adjudicated. Not being so it is too late now to raise any question of the invalidity of said proceeding. See as to final judgement I Black Section 21, 22 and 23.

Sixth.—Where a person sui juris, and in this case Taylor acted for the infants, ~~wixh~~ affirms a voidable act with know~~ledge~~ of the fact, he will be estopped to allege that it was voidable, if the other party has acted upon it.—See Bigelow on Estoppel page 475.

Very truly yours &c.

C. J. Duncan

ИТАЛИЯ И МАКЕДОНИЈА
УМРЕЖИВАЊЕ

481

1871

5. 7. 2. 1.

ALLA FULLA MONTE

L & N. R R
Box 3 Brief
Layton Guard

The Commonwealth of Virginia.

To The Sheriff of Lee County Greeting:

WE COMMAND YOU TO SUMMON

Louisville & Nashville Rail Road
Company a body Corporate under & Virtue
of the laws of Kentucky & Virginia doing
business in Virginia

to appear at the Clerk's office of the Circuit Court of Lee County, at the Court House, on the first Monday in
September.....next, being rule day to answer a bill in Chancery exhibited in our said Court against

It by *Susan M. Taylor Maggie*
Ely, Mary Ely and Annie Ely the last three are
and Sue by Susan M. Taylor their next friend & Guardian

And have then and there this writ.

Witness, *A. B. Munsey*
J. A. G. Hyatt, Clerk of said Court at the Courthouse.

This *14th* day of *August* 18*93* in the 11*8th* year of the Commonwealth.

A. B. Munsey Clerk.

A Copy Teste..... Clerk.

ALP

Susan M Taylor et al
vs Spa In Chy
L & N. R. R. Co
To 1st Sept Rules 1893

There being no president cashier treasurer general superintendent
or any of the directors of the Louisville and Nashville Railroad
company found in or resident of my county I executed the
within summons by delivering a true copy of the same on the 17 day
of Aug 1893 to J. A. Brownlee depot agent of said Railroad company at its
depot at Kennington Gap in the said county of Lee and State of Virginia the
said J. A. Brownlee being a resident of ^{said} county and said depot being the
place of business of said company and of said J. A. Brownlee
agent as aforesaid this Aug the 18. 1893

G. E. Flanary. S. L. C